



# **State of Washington**

## **A Report to the Legislature: Air Ambulance Services**

Submitted By: The Office of the Insurance Commissioner  
December 2005

## **Executive Summary**

During the 2005 legislative session, at the request of San Juan County residents, the Legislature considered SB 5736<sup>1</sup>, an act relating to exempting certain private air ambulance services from insurance regulation. The bill was brought with the intent to help restore subscription air ambulance programs for Washington residents that had been discontinued in 2002 due to financial difficulties and regulatory compliance issues.

Under current law, subscription air ambulance services are considered insurance products and subject to licensure, minimum financial reserving and solvency requirements. After hearings and testimony, the Legislature amended the bill (ESSB 5736) to require the Office of the Insurance Commissioner (OIC) to study and report on the feasibility of subscription air ambulance services in the state of Washington “geared toward allowing a person, entity, corporation, or nonprofit corporation to offer, sell, and provide subscription air ambulance service.”

After studying the issue, the OIC and interested stakeholders recommends subscription air ambulance services be exempt from Title 48 of the insurance code, if the provider meets the following criteria:

- The product may only be sold by providers of air ambulance service;
- The air ambulance service must be certified by the Department of Health; and in operation for at least two years;
- Certification must be attained and maintained from the Commission on Accreditation of Medical Transport Systems (CAMTS); and
- Evidence of compliance with these criteria is submitted to the Office of the Insurance Commissioner.

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<sup>1</sup> <http://www.leg.wa.gov/pub/billinfo/2005-06/Pdf/Bills/Senate%20Bills/5736.pdf>

## **Introduction**

In 2005, the Washington State Legislature enacted ESSB 5736<sup>2</sup> relating to the availability of subscription air ambulance services. This act directs the OIC, in concert with public and private entities and individuals involved in offering, providing, and purchasing air ambulance products, to:

- “Assess the needs and concerns of likely subscription air ambulance vendors, including the costs of providing affordable air ambulance service to rural and island residents, as well as the burdens placed on vendors if held to the reporting and solvency requirements of the insurance code”;
- “Determine the implications of subscription air ambulance service on consumer protection issues”; and
- “Compare the state’s need for affordable subscription air ambulance service to other states that allow this service, including an inquiry into the practices of out of state vendors who provide the service, as well as the applicability of other states’ insurance code.”

The act directs the Commissioner to report the results of the study and make recommendations to the legislature.

## **Subscription Air Ambulance Service**

Subscription, also referred to as membership, air ambulance programs are prevalent throughout the United States. The service is available in at least eighteen states. Subscription services generally are offered to consumers in the service area of an air ambulance provider. For a flat yearly fee, normally \$50-\$100, the air ambulance provider agrees to transport the “subscriber” or a member of the immediate family when medically necessary at no additional charge other than the yearly fee. To complete the agreement<sup>3</sup>, the subscribers agree to allow the air ambulance provider to bill their insurance if the subscriber has insurance. However, there is no requirement to have underlying health insurance to purchase subscription services from the provider. In essence, the purchase of a subscription provides peace of mind in the event the subscriber needs to be transported via the service and insurance does not cover the entire charge. Or in rarer instances, the entire charge is covered if the consumer has no underlying insurance. In addition, some subscription providers have reciprocity agreements with subscription programs in other areas so a subscriber may have a larger area in which their subscription benefit would apply.

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<sup>2</sup> <http://www.leg.wa.gov/pub/billinfo/2005-06/Pdf/Bills/Senate%20Passed%20Legislature/5736-S.PL.pdf>

<sup>3</sup> <http://www.saintalphonsus.org/bodysarmc3.cfm?id=36>

## **Air Ambulance Services in Washington State**

Only one subscription air ambulance is known to have existed in Washington State. From 1985 until 2002, a subscription air ambulance program called “MedFlight” was operated by Saint Joseph’s Hospital in Bellingham for residents in Island, San Juan, Skagit and Whatcom counties. The MedFlight subscription cost \$100 per year and operated in the same manner as other subscription air ambulance services described previously. This program operated as a subscription program until the early 1990’s.

At that time, the OIC determined that the subscription program was an insurance product based on an Attorney General’s opinion sought by the agency for a similar program. Following this opinion, the program was subject to compliance with RCW 48-44-037<sup>4</sup> of the insurance code. To comply with the decision and the resultant financial and reporting guidelines under the insurance code, Saint Joseph’s Hospital created an insurance product through an affiliation with HealthGuard Services of Washington. HealthGuard was a Washington non-profit corporation licensed as a health care services contractor in Washington. Both Saint Joseph’s Hospital and HealthGuard Services of Washington were wholly-owned subsidiaries of PeaceHealth. PeaceHealth is a non-profit healthcare provider operating in Alaska, Oregon and Washington.

The MedFlight/HealthGuard subscription program encountered a problem during the year 2000. When Saint Joseph’s partnered with HealthGuard in the early 1990’s to create the product that complied with Washington insurance law, HealthGuard was required to maintain a minimum net worth as a health services contractor of \$3 million pursuant to RCW 48-44-037. During a filing with the OIC in 1999, it was discovered that HealthGuard had listed surplus notes to its parent PeaceHealth of \$170,000 for the years 1991-1999 as part of the minimum net worth requirement under the law. These surplus notes were not approved by the OIC as required by RCW 48-44-037(3) (c) of the insurance code. This resulted in HealthGuard signing a consent order<sup>5</sup> to comply with the law and was ordered to pay a \$60,000 fine for the violations. HealthGuard paid \$30,000 of the fine and \$30,000 was suspended for two years on condition of compliance with the law and no further violations.

From 1985 until mid-year 2000, Saint Joseph’s Hospital had been operating an independent air ambulance service through a leasing agreement with a company in Louisiana and hiring its own medical personnel. The independent air ambulance service served the hospital’s northwest Washington service area including members of the MedFlight/HealthGuard subscription program. Facing operational losses in the air ambulance service of \$500,000 per year due to high fixed costs from operating the service, the hospital decided it could no longer financially continue offering air ambulance services. Needing to continue to offer these emergency services in the area, and the subscription program, the hospital entered into a service agreement with Airlift

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<sup>4</sup> <http://apps.leg.wa.gov/RCW/default.aspx?cite=48.44.037>

<sup>5</sup> <http://www.insurance.wa.gov/oicfiles/orders/2000orders/D00-126.pdf>

Northwest, a non-profit air ambulance service provider based in Seattle to provide air ambulance services for the hospital.

The MedFlight/HealthGuard subscription program continued after Airlift Northwest took over the air ambulance service in mid 2000 until fall 2002. At that time, contemplated changes in the Medicare Modernization Act (MMA) affected the continuation of the program. The change dealt with Saint Joseph's hospital and what is known as "services under arrangement" under federal Medicare guidelines. The proposed changes would have required Airlift Northwest to bill the subscriber's Medicare coverage for air ambulance services instead of the hospital. This was contrary to how the program was constructed and operated. After reviewing the situation, the hospital determined it could not find a way to offer the subscription program and be in compliance with both federal laws and state insurance laws. The only way for the program to continue would be for Airlift Northwest to offer the product. At that time, Airlift Northwest lacked the resources and ability to create an insurance product under Washington insurance law to offer the product. So in September 2002, the MedFlight/Healthguard subscription program ended.

## **2005 Legislative Session**

After Washington's MedFlight/HealthGuard program was discontinued, residents of San Juan County were concerned with the affordability and availability of air ambulance services in the island county. Working with the Washington Association of Counties and local legislators, the residents had SB 5736 introduced. It would exempt certain air ambulance services from the regulation under the insurance code. It was hoped that this exemption would help resurrect a subscription program for San Juan County by eliminating some regulatory requirements under state law as many other states had done including neighboring states Idaho and Oregon. After hearings in both the House and Senate, the following issues were brought to light:

- Without an exemption from certain insurance requirements, subscription air ambulance services would not be available to island and rural residents placing financial hardship on residents and possibly causing residents to refuse such services if they did not have the means to pay for it;
- Exempting air ambulance subscription services may encourage subscription products that lacked adequate financial resources for solvency and not provide the consumer protections under the insurance code;
- Exempting air ambulance services may cause a proliferation of subscription services that may lack adequate patient safety standards putting the public at-risk; and
- Under what circumstances Washington providers would be willing to offer a subscription product to affected residents.

With these questions unresolved, the legislature passed ESSB 5736 requiring the OIC to evaluate the feasibility of subscription air ambulance services.

## **The Study**

ESSB 5736 required the OIC to study the feasibility of subscription air ambulance services in Washington. Working with stakeholders, the following steps were identified as needed to gather the information necessary to compile this report:

- Survey other states as to the existence and/or insurance regulation of subscription air ambulance services;
- Identify and survey existing subscription air ambulance providers in other states; and
- Survey Washington air ambulance providers about services provided and willingness to provide subscription services.

After this information was gathered and assembled into a useful form, it was decided the stakeholder group would meet to review the information and make recommendations as to how subscription air ambulance service should proceed in Washington.

## **Survey of State Insurance Regulation**

To begin, all states were queried through the National Association of Insurance Commissioners. This survey<sup>6</sup> was sent to every state and some U.S. territories to discover which states regulated subscription air ambulance services. Additionally, research was done to find out where the services presently existed. In all, the status of subscription air ambulance was ascertained in 27 states<sup>7</sup>. Of the 27 states:

- 22 states specifically exempted or did not contemplate such services;
- 2 states considered the services an insurance product (Nevada and Wisconsin);
- 1 state exempted the service with criteria (Indiana);
- 1 state considered the service a debt protection product (Wyoming); and
- 1 state found the service to be illegal (New York).

All state insurance regulators were asked if consumer complaints resulted from subscription air ambulance services. No consumer problems were reported.

## **Air Ambulance Provider Surveys**

### **Out of State Subscription Provider Survey**

Research was conducted to identify out-of-state subscription air ambulance providers. Seven entities providing services were identified doing business in eighteen states. All

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<sup>6</sup> See Appendix A

<sup>7</sup> See Appendix B

entities were asked to participate in a survey regarding its business<sup>8</sup>. Two out-of-state providers agreed to participate in the survey. One was Air St. Lukes in Idaho and the other was Airlife of Oregon. Based on the responses, both providers were non-profit entities operating in states where subscription air ambulance services were exempt from insurance regulation. Detailed membership and financial reimbursement information<sup>9</sup> was received from both entities.

Some other notable common elements were identified from the survey:

- Both entities who marketed subscription services also were the air ambulance provider for the subscription program;
- Both charged \$50 for membership which included the member, spouse, and unmarried dependents;
- Both programs received reimbursement of approximately 75 percent from private insurance and 70 percent from Medicare; and
- Only 2-4 percent of people purchasing a subscription are without insurance.

Of particular interest is the very low number of people purchasing a subscription who are considered uninsured. This shows the vast majority of people purchasing this product have underlying insurance that the subscription service may bill, suggesting the transference of risk from this product is very small compared to most insurance products. It also suggests “adverse selection” is not prevalent. In light of this, the most current information regarding the percentage of uninsured people (health insurance) was obtained for each provider’s market area to better understand the relationship of this product to the overall health insurance market.

### **Washington Air Ambulance Provider Survey**

Two Washington air ambulance providers participated in the survey<sup>10</sup>. Seattle-based Airlift Northwest, providing services in western Washington, and Spokane-based Northwest MedStar providing services in central and eastern Washington. Both are non-profit organizations, licensed by the Department of Health, that have attained accreditation from the Commission on Accreditation of Medical Transport Services (CAMTS)<sup>11</sup>.

Each entity provided detailed financial information regarding its service<sup>12</sup> and also expressed an interest in potentially providing subscription air ambulance to island and rural residents if such services were exempted from certain insurance requirements under

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<sup>8</sup> See Appendix C

<sup>9</sup> See Appendix D

<sup>10</sup> Appendix E

<sup>11</sup> <http://www.camts.org/index.php?option=content&task=view&id=4&Itemid=27>

<sup>12</sup> Appendix F

the insurance code. For comparison purposes, the most current information regarding the percentage of uninsured people (health insurance) was obtained for each provider's market area.

In comparing these results with the out-of-state subscription providers, the following results are notable:

- Both are an air ambulance service provider with an interest in providing a subscription service;
- Both have been providers for over ten years;
- Both air ambulance providers have similar private insurance reimbursement rates;
- Washington's uninsured rates (health insurance) are lower in comparison to the out of state provider states uninsured rates<sup>13</sup>.

## **Stakeholder Group**

During the study, numerous parties were identified as having an interest in the resolution of this issue. It was determined the best way to gather input from the interested parties was to assemble a stakeholder group<sup>14</sup> for a meeting. On September 20, 2005, this group met in Seattle. The group was able to review the information gathered from the study, and provide input and perspective. The recommendations of this report were discussed and supported by the stakeholder group.

## **Recommendations**

Based on the results of the research along with considerable input from the stakeholder group, it is recommended that subscription air ambulance services be exempt from Washington insurance regulation subject to the following criteria:

- The product may be sold only by providers of air ambulance service;
- The air ambulance service must be certified by the Department of Health; and in operation for at least two years;
- Certification must be attained and maintained from the Commission on Accreditation of Medical Transport Systems (CAMTS); and
- Evidence of compliance with these criteria must be submitted to the Office of the Insurance Commissioner.

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<sup>13</sup> Appendix G

<sup>14</sup> Appendix H



We believe the above recommendations provide the ability for subscription air ambulance programs to operate in Washington while addressing solvency concerns, potential consumer problems and patient safety. Only allowing the exemption when offered by licensed air ambulance service providers with two years experience assures the program will be marketed by an entity with substantial assets and a long-term commitment to operating successfully. The CAMTS certification requirement further underscores this point while at the same time ensuring subscription purchasers have the highest level of patient safety currently attainable in the medical transport industry.

## **Appendices**

## **Appendix A: Subscription Air Ambulance State Insurance Regulation Survey**

Due to Washington State's unique geography, which includes numerous inhabited islands in Puget Sound and less populated rural areas far away from major medical centers, air ambulance service is vital to quality care for critically ill or injured people in those areas.

The Washington State Legislature passed ESSB 5736 which requires the Washington State Office of the Insurance Commissioner (OIC) to fund and perform an evaluation of the feasibility of subscription air ambulance service.

Subscription air ambulance service is defined in the bill as:

**"Air ambulance service offered by a vendor that solicits membership subscriptions, accepts membership applications, charges membership fees, and furnishes prepaid or discounted air ambulance service to subscription members and designated members of their households."**

Given this legislative mandate, I would like to ask the following questions of your agency:

1. Does your state regulate subscription air ambulance services as defined above? If not, is it specifically exempted from the insurance code? If it is regulated, please consider the following questions:
2. How are rates regulated? Exempt, full force of the code, or does this product have a special niche?
3. Do you have the names of any companies providing such services?
4. If this service is available, have there been any consumer protection issues with regard to the service provided?

**Any direction to specific code related to the above would be greatly appreciated.**

Thank you in advance for any assistance. Please contact me if you have any questions or need further clarification of any information above.

Regards,

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## **Appendix B: Results of State Insurance Regulation Survey**

State/Territory	Subscription Air Ambulance Service	Insurance Regulation	Financial Requirement
Arizona	Yes	Exempt § 20-103	
Arkansas	Yes	Not regulated	
California	Yes	Exempt	
Colorado	Yes	Exempt	
Connecticut	No	Not regulated	
Florida	Yes	Exempt FIC 624.127	
Idaho	Yes	Not regulated	
Illinois	Yes	Not regulated	
Indiana	Yes	Exempt w/Criteria IC 27-4-5-2(a)(9)	N/A if exemption met
Kansas	No	Not regulated	
Kentucky	Yes	Exempt KRS 304.1-120	
Louisiana	Yes	Not Regulated	
Massachusetts	No	Not regulated	
Mississippi	Yes	Exempt § 41-59-63	
Missouri	Yes	Not regulated	
Montana	Yes	Exempt MCA 7-34-103	
Nevada	Yes	Insurance or Prepaid LHSO NRS 680A, NRS 695F	LHSO- 3% of premium collected not to exceed \$500,000
New York	No	Ruled Illegal	N/A
Oklahoma	Yes	Not regulated	
Oregon	Yes	Exempt ORS 731.036	
South Dakota	Yes	Not regulated	
Tennessee	Yes	Not regulated	
Texas	Yes	Exempt § 773.011	
Virginia	No	Not regulated	
West Virginia	No	Not regulated	
Wisconsin	No	Insurance	TBD by Commissioner
Wyoming	Yes	Debt Protection Product	N/A

### **Appendix C: Provider Subscription Air Ambulance Questions**

1. Who regulates or authorizes you to provide this service?
2. What sort of financial responsibility (if any) are you required to post with the regulator?
3. Is your company required to be audited each year and by whom?
4. What agency handles consumer complaints (if any)?
5. How do you calculate membership amount and how many subscribers are needed to be feasible?
6. If you operate in more than one state, what regulatory implications (if any) are there?
7. How many subscribers (members) are in your program?
8. What is the population base in your subscription area(s), and what percentages of people subscribe?
9. Is there a minimum population base needed for this service to be feasible?
10. Is there a market penetration (number of subscribers) in an area that would make subscription service not economically feasible?
11. In your subscription area, what is the average number of subscriber flights per year?
12. In your subscription area, what is the average number of overall flights per year?
13. What is the average cost of a flight in a subscription area?
14. What is your average private insurance reimbursement on behalf of the subscriber?
15. What is the average Medicare reimbursement on behalf of the subscriber?
16. What happens to the charges (in excess of the subscriber fee) if the subscriber does not have insurance?
17. Would you be interested in providing this service in Washington State?

## **Appendix D: Out of State Provider Survey Results**

Member ship Provider	Mem. Cost and Coverage	Profit or Non-Profit	Fixed and/or Rotor Wing	Number of Members	Pop. of Member Area	Market. Penetration	Member Flights	Overall Flights	Member Flight %	Insurance Reg.
ID	\$50, Member, spouse and unmarried dependents	Non-Profit	Both	7,850	300,000	2.62%	51	850	6%	Exempt
OR	\$50, Member, spouse and unmarried dependents	Non-Profit	Both	30,000	262,000	26%	286	1,300	22%	Exempt

Membership Provider	Mem. Flights	Flight Ratio	Rotor Wing Average Bill Amount	R.W. Avg. Reimbursement Private Ins/ Medicare	R.W. Avg. Net Revenue All Sources	Fixed Wing Avg. Bill Amount	F.W Avg. Net Revenue All Sources	Flights with no Reimbursement (Membership fee only)
A (ID)	51	2/3 rotor 1/3 fixed	\$10,000	\$7,500 Private \$7,000 Medicare	N/A	N/A	N/A	2 (4%)
B (OR)	286	1/3 rotor 2/3 fixed	\$7,995	\$5,950 Private \$4,960 Medicare	\$4,757	\$11,803	\$6,138	6 (2%)

## **Appendix E: Washington Air Ambulance Provider Survey**

- 1) How long have you been an air ambulance provider?
- 2) Are you for profit or non-profit?
- 3) Who presently regulates or authorizes you to provide services?
- 4) What sort of financial responsibility (if any) are you required to post with the regulator?
- 5) What agency handles consumer complaints (if any)?
- 6) Is your company required to be audited? If so, how often and by whom?
- 7) In what geographic area does your company presently conduct business?
- 8) Do you have fixed and rotor wing service?
- 9) Are you interested in exploring the possibility of providing subscription air ambulance service in Washington? If yes, in what geographic area?

**If you answered yes to question 8, or if you currently provide air ambulance service in a prospective subscription area, please answer the following questions:**

- 1) What is the average number of flights a year your company provides in the prospective subscription area?
- 2) What is the average cost of a flight?
- 3) What is the average private insurance reimbursement for a flight?
- 4) What is the average Medicare reimbursement for a flight?
- 5) What percentage of flights does your company receive no reimbursement?
- 6) Could you provide this service if it is deemed to be “insurance” and subject to regulation as such? (if no, please indicate reasons)
- 7) Could you provide this service if it is deemed to be a “limited health care service” and subject to regulation as such? (if no, please indicate reasons)
- 8) Have you conducted any research as to the feasibility of providing this service in Washington? (if yes, please indicate where and the findings)
- 9) If you decided to provide this service, would you consider a reciprocity agreement with subscription programs in other states?

## **Appendix F: Washington Provider Survey Results**

WA Provider	Profit or Non-profit	Fixed and/or Rotor Wing	Overall Flights	Flight Ratio	R.W. Avg. Reimbursement Private Ins/Medicare	F.W. Avg. Reimbursement Private Ins/Medicare	Rotor Wing Gross Revenue	Fixed Wing Gross Revenue	% of Flights with a Reimbursement Source	% of Private Pay or Non-Reimbursed Flights
Western WA (San Juan County R.W. only figures)	Non-Profit	Both	274 (San Juan County)	N/A	\$5,315 Private \$2,990 Medicare	N/A	\$8,850	N/A	92%	8%
Central & Eastern WA	Non-Profit	Both	3,000	2/3 rotor 1/3 Fixed	\$7,312 Private \$3,878 Medicare	\$8,277 Private \$4,436 Medicare	\$8,421	\$9,397	67%	33%



## **Appendix G: Comparison of Uninsured Rates**

Provider	State	Primary Counties of Operation	Uninsured Rate
Air St. Lukes	Idaho	Idaho, Adams, Washington, Payette, Gem Valley, Boise, Canyon, Ada, Elmore, Owyhee, Custer, Camas, Gooding, Lincoln, Jerome, Twin Falls	15-30+ %
Airlife	Oregon	Crook, Deschutes, Jefferson, Grant, Harney, Klamath, Lake, Baker, Malheur, Union, Wallowa	18.4-24.6%
Airlift Northwest	Western Washington	Island, Skagit, Whatcom, and San Juan	12.2%
Northwest MedStar	Central & Eastern Washington	Adams, Asotin, Benton, Chelan, Ferry, Franklin, Garfield, Grant, Kittatas, Lincoln, Okanogan, Pend Oreille, Stevens, Walla Walla, Whitman, Yakima	9.4-13.8%

## **Appendix H- Stakeholder Group**

### **Participated in Stakeholder Meeting**

Joan Berkowitz, Consumer  
John Evans, San Juan County Commissioner  
Michael Day, Northwest MedStar  
Christine Zalar, Northwest MedStar  
Nancy Vorhees, Northwest MedStar  
Toni Long, Airlift Northwest  
Marcia Lingel, Airlift Northwest  
Orlando Cano, House Democratic Caucus  
Jon Hedegard, House Committee Staff  
Chris Carlson, Office of the Insurance Commissioner  
Mary Clogston, Office of the Insurance Commissioner

### **Invited, But Could Not Attend Meeting**

Vicki Kirkpatrick, Washington Association of Counties  
Joanne Conrad, Senate Committee Staff